SC-2024-0672

IN THE SUPREME COURT OF ALABAMA

EX PARTE ALTONIO SPENCER

In re: ALTONIO SPENCER, PETITIONER,

v.

STATE OF ALABAMA, Respondent

Circuit Court of Mobile County
(CC-18-288)

On Writ of Certiorari to the
Alabama Court of Criminal Appeals
(CR-2022-1213)

STATE OF ALABAMA'S RESPONSE BRIEF

STATE OF ALABAMA
OFFICE OF THE ATTORNEY GENERAL
501 Washington Avenue
Montgomery, Alabama 36130
(334) 242-7300
(334) 353-8400 (facsimile)
Edmund.LaCour@AlabamaAG.Gov
George.Muirhead@AlabamaAG.gov
Chris.Howell@AlabamaAG.gov

Steve Marshall
Attorney General

Edmund G. LaCour Jr.
Solicitor General

George Muirhead
Assistant Solicitor General

Chris Howell
Assistant Attorney General

March 19, 2025

STATEMENT REGARDING ORAL ARGUMENT

Oral argument is requested in this matter. The question presented raises important questions of statutory interpretation related to the proper punishment of habitual felony offenders who later commit crimes that the State has deemed to be serious enough that parole should not be allowed. Oral argument will assist the Court in reaching its decision on this issue of first impression.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Other Authorities

STATEMENT OF THE ISSUE

The question presented is whether the Habitual Felony Offender Act (Ala. Code § 13A-5-9(c)(3)) and the pharmacy robbery statute (Ala. Code § 13A-8-52(a)) can be read together harmoniously to give them both effect or whether the Habitual Felony Offender Act implicitly repealed the part of the pharmacy robbery statute that makes those who violate that statute ineligible for parole.

STATEMENT OF THE FACTS

Altonio Spencer was convicted for pharmacy robbery, *see* Ala. Code 13A-8-51, and sentenced to life imprisonment without the possibility of parole. CCA Op. 1-2.

At the sentencing hearing, given Spencer's prior felony convictions, the State filed notice that it would proceed with sentencing under the Habitual Felony Offender Act (HFOA). *Id.* at 9. The State proved four felony convictions, "for the offenses of first-degree receipt of stolen property, second-degree assault, breaking and entering a vehicle, and unlawful possession of a firearm." *Id.* at 27; *see also id.* at n.3. Based on the latest offense (pharmacy robbery), and his past felony convictions, the trial court recognized the "minimum sentence Spencer could receive for his pharmacy-robbery conviction" is life imprisonment without the possibility of parole, and the court sentenced him accordingly. *Id.* at 28.

The Court of Criminal Appeals affirmed. The court held that under the HFOA, Spencer "must be punished by imprisonment for life or life without the possibility of parole, in the discretion of the trial court." *Id.* (quoting § 13A-5-9(c)(3)). And because the Class A felony Spencer committed was pharmacy robbery, he was ineligible for consideration for parole. *Id.* Thus, "the trial court correctly recognized that a sentence of

life imprisonment under the HFOA would effectively be a sentence of life imprisonment without the possibility of parole because no person who is convicted of pharmacy robbery is eligible for parole." *Id.* Spencer petitioned this Court for a writ of certiorari, and this Court granted.

SUMMARY OF ARGUMENT

Altonio Spencer robbed a pharmacy. Under Alabama law, first-degree robbery is a Class A felony, Ala. Code § 13A-8-41, and the sentencing judge has discretion to sentence the defendant to "life or not more than 99 years or less than 10 years," *id.* § 13A-5-6(a)(1). The Habitual Felony Offender Act (HFOA), however, provides for "Additional penalties" if the defendant who commits the robbery has prior felony convictions. *Id.* § 13A-5-9. In this case, because Spencer had four prior felonies (though no Class A felony), the sentencing judge's discretion was more limited: Spencer "must be punished by imprisonment for life or life without the possibility of parole, in the discretion of the trial court." *Id.* § 13A-5-9(c)(3). Finally, because Spencer was convicted not of mere robbery, but of "pharmacy robbery," he was "ineligible for consideration for parole, probation or suspension of sentence." *Id.* § 13A-8-52(a).

The circuit court concluded that to comply with the HFOA and pharmacy robbery statute, the court was required to sentence Spencer to

life without the possibility of parole. That conclusion was correct. It is compelled by the text of those provisions, the broader context in which they are situated, and long-standing principles of interpretation that recognize that courts should be quick to harmonize provisions wherever possible and loathe to deem them in irreconcilable conflict. The Court of Criminal Appeals correctly affirmed the circuit court's decision, and this Court should do the same.

Spencer counters that the HFOA has implicitly repealed the pharmacy robbery statute because the relevant provision provides that he "must be punished by imprisonment for life or life without the possibility of parole, *in the discretion of the trial court*," § 13A-5-9(c)(3) (emphasis added), and the pharmacy robbery statute denied the court that discretion. But that interpretation runs into a number of problems.

First, the text and structure of the HFOA make clear that it was enacted to *increase* penalties on those offenders who have previously been convicted of serious crimes by requiring higher penalties and thus narrowing the trial court's discretion. Spencer's view of the HFOA would turn the statute on its head by reading it to potentially *reduce* punishment, rather than increase it. But the "obvious intent of the

legislature in enacting the Habitual Felony Offender Act was to authorize the infliction *of a more severe penalty* on one who is a persistent offender…." *James v. State*, 405 So. 2d 71, 74 (Ala. Crim. App. 1981) (emphasis added). The law imposes an "additional penalty." *McLester v. Smith*, 802 F.2d 1330, 1332 (11th Cir. 1986). There is no necessary conflict between the HFOA and the pharmacy robbery statutes. The "habitual offender statute does not create a new crime," but merely "enhances the punishment for [Petitioner's] latest offense," *Coker v. State*, 396 So. 2d 1094, 1098 (Ala. Crim. App. 1981), while the pharmacy robbery statute provides its own enhancement for a particular type of first-degree robbery that the Legislature deemed to be particularly egregious. It makes far more sense to apply the two statutes together as the lower courts did here than to read the HFOA to gut the specific penalty attached to pharmacy robbery.

Second, even if the interpretative question is a close one, this Court has long held that "[t]he law does not favor the repeal of statutes by implication; and only declares such repeal, when all efforts at reconciliation have failed." *Herr v. Seymour*, 76 Ala. 270, 275 (Ala. 1884). Moreover, implied repeal is particularly "disfavored when the earlier act"

(here, the pharmacy robbery statute) "is specific and the subsequent act" (here, the HFOA) "is general." *Gulf State Park Auth. v. Gulf Beach Hotel, Inc.*, 22 So. 3d 432, 442 (Ala. 2009). Likewise, this Court has repeatedly recognized that "[s]tatutes should be construed together so as to harmonize the provisions as far as practical." *Douglas v. Griggers*, No. SC-2023-0259, 2024 WL 1336121, at *3 (Ala. Mar. 29, 2024). These foundational principles of interpretation bolster the State's reading of the criminal code, which shows that (1) robbery is a serious felony deserving of a serious Class A sentence, and (2) someone with many prior felonies should receive life or life without parole, and (3) if that robbery is particularly egregious because it was of a pharmacy, then parole too should be taken off the table. For general Class A felonies by a habitual offender with Spencer's record, the trial court should still retain discretion to choose between life or life without parole, but in the specific context of pharmacy robbery (or other specific crimes designated by the Legislature) parole is not an option, whether the sentence is for a term of years or for life. Quite plainly, all "efforts at reconciliation" have not failed. *Herr*, 76 Ala. at 275. The statutes are not "so repugnant to or in conflict with each that it must be presumed that the Legislature intended

that the latter should repeal the former." *City of Birmingham v. S. Express Co.*, 51 So. 159, 162 (Ala. 1909).

ARGUMENT

I. The Habitual Felony Offender Act And The Pharmacy Robbery Statute Both Apply To Spencer And Require A Sentence Of Life Without Parole.

Spencer was a habitual offender when he was sentenced for committing the crime of pharmacy robbery. The Habitual Felony Offender Act is designed to enhance penalties for a class of defendants (those with many felony convictions), and the pharmacy robbery statute is designed to enhance penalties for a particular crime (robbing a pharmacy). Spencer triggered both statutes, and the trial court thus rightly subjected him to the consequences of both. The Court of Criminal Appeals was right to affirm his sentence.

Stepping back, the Legislature designates certain crimes as felonies and assigns each a classification that sets the initial sentencing discretion of the trial court. Ala. Code § 13A-5-4. Sentences for Class A felonies, for example, are "for life or not more than 99 years or less than 10 years," while sentences for Class B felonies are for "not more than 20 years or less than two years," and so on. *Id.* § 13A-5-6(a). And recognizing the existence of other provisions of Alabama law that provide for parole

(Ala. Code § 15-22-1.1 *et seq*.) and split sentences (Ala. Code § 15-18-8), the general provision for sentences provides that the "actual time of release within the limitations established by subsection (a) shall be determined under procedures established elsewhere by law." Ala. Code § 13A-5-6(b).

The HFOA limits this discretion to ensure that repeat offenders receive harsher sentences. The HFOA "does not create a new crime. Rather, it merely enhances the punishment of the present crime because of the defendant's prior conviction." *Coker,* 396 So. 2d at 1098. The provision ensures that an offender with a demonstrated record of criminality receives an "increase[d] … punishment for his latest offense." *Id.* It sets a floor on punishment, not a ceiling. The title of the provision drives home this point by including the phrase "additional penalties." *McLester,* 802 F.2d at 1332 ("Title 13A-5-9 provides that a criminal defendant who has been convicted of a felony and is convicted of another felony must be punished by an additional penalty."). Many similar habitual offender acts have been similarly characterized and analyzed as "enhancements" to a baseline sentence. *Gryger v. Burker*, 334 U.S. 728,

732 (1948) (A penalty for habitual criminality is to be viewed as "a stiffened penalty for the latest crime.").

The Legislature has also set other limits on the discretion of sentencing courts by attaching additional penalties to specific crimes. For example, § 13A-5-6(d) provides that "[i]n addition to any penalties otherwise provided by law, in all cases where an offender is convicted of" certain sex offenses "when the defendant was 21 years of age or older and the victim was six years of age or less at the time the offense was committed, the defendant shall be sentenced to life imprisonment without the possibility of parole." Likewise, here, the Legislature singled out robbery of a pharmacy as a crime to which it wanted to attach special opprobrium by mandating that a defendant convicted of the crime "shall be imprisoned … for not less than 10 years nor more than 99 years and shall be ineligible for consideration for parole, probation or suspension of sentence." Ala. Code § 13A-8-52(a).

As the lower courts recognized here, Spencer's criminal history triggered the HFOA, and his particular crime triggered the pharmacy robbery statute. Under the HFOA, any Class A felony would make Spencer eligible for one of only two sentences—life or life without parole.

And because that Class A felony was pharmacy robbery, he was "ineligible for consideration for parole." Ala. Code § 13A-8-52(a).

That reading is commanded by the text of the relevant provisions, their clear purposes, their context within the Code, as well as numerous well-established principles of statutory interpretation.

Beginning with the text of the HFOA, when "determining the meaning of a statute, this Court looks to the plain meaning of the words as written by the legislature." *Dekalb County LP Gas Co. v. Surburban Gas, Inc.*, 729 So. 2d 270, 275 (Ala. 1998). "The cardinal rule of statutory interpretation is to determine and give effect to the intent of the legislature as manifested in the language of the statute." *Ex parte University of South Alabama*, 761 So. 2d 240, 243 (Ala. 1999). And the meaning of any language "draws on the specific context in which that language is used." *Johnson v. Four-C Volunteer Fire Dep't*, No. SC-2024-0205, 2024 WL 5101169, at *15 (Ala. Dec. 13, 2024) (cleaned up).

The context of the HFOA shows that it is designed to enhance the sentence of a habitual offender. While § 13A-5-9(c)(3) states that a defendant sentenced under that provision "must be punished by imprisonment for life or life without the possibility of parole, in the

discretion of the trial court," it is clear from the overall structure of the Act that the goal of this provision is to increase a sentence, not increase judicial discretion—this is not the Additional Discretion to Sentence Habitual Offenders Act. And it makes little sense to read § 13A-5-9(c)(3) as enshrining a defendant's right to argue for parole, even when he's committed a felony that makes him ineligible for parole.

Spencer's contrary reading would lead to even more bizarre results in other cases. For example, as noted above, an adult convicted of child sex abuse under § 13A-5-6(d) "shall be sentenced to life imprisonment without the possibility of parole." But under Spencer's reading of the HFOA, if that offender had a prior felony, he would *not* get life without parole because "[o]n conviction of a Class A felony, he or she must be punished by imprisonment for life or for any term of not more than 99 years but not less than 15 years." § 13A-5-9(a)(3). Or if the sex offender had three felonies, it would be in the discretion of the trial court to grant life with parole. § 13A-5-9(c)(3). "[S]uch a schizophrenic reading" of the HFOA is a clear indication that the interpretation "has gone seriously wrong." *Torres v. Madrid,* 592 U.S. 306, 332 (2021) (Gorsuch. J., dissenting).

Several well-established interpretive principles further bolster the State's reading.

First is the presumption against implied repeal. "The law does not favor the repeal of statutes by implication; and only declares such repeal, when all efforts at reconciliation have failed." *Herr*, 76 Ala. at 275.[1] The presumption yields only if "there is real repugnance in the provisions." *Id.* "If there is not an irreconcilable conflict between the two statutes—if there can be found a reasonable field of operation for the later statute,

---

[1]*See also Williams v. State,* 28 Ala. App. 73, 75 (Ala. App. 1938) ("The rule is settled that the repeal of statutes by implication is not favored by the law. In order to harmonize legislative acts, courts are required to adopt, if necessary, rules of fair and liberal construction. If it be possible to reconcile the two statutes so as to permit both to stand, without violating sound principles of construction, this will be done."); *Stone v. State ex rel. Lartigue,* 30 Ala. App., 162, 165 (Ala. App. 1941) ("Repeal by implication is not favored and if there be a discrepancy, such interpretation should be made, if practicable, that both may stand together. And the latter statute shall not repeal an older one by implication, unless so inconsistent that they, both, cannot stand together. Repugnance between the two must be glaring and irreconcilable. Both the terms and the necessary operation of the two acts must be incapable of reconciliation before a later act operates to repeal a former one by implication.").

without displacing the provisions of the previous law—the conclusion results, that the legislature intended both statutes should stand." *Id.*

That conclusion results here. Under the Court of Criminals Appeals' reading of the HFOA, there is still "a reasonable field of operation for" that statute. Even if it is assumed that one (or even the) point of § 13A-5-9(c)(3) was to confer discretion on trial courts, that discretion remains for typical Class A felonies. Even though that discretion is cabined for specific crimes like pharmacy robbery, this limited conflict leaves a wide field of operation for § 13A-5-9(c)(3).

The HFOA consists of "enhancement provisions," CCA Op. at 27, and the pharmacy robbery statute both provides the baseline sentence (Class A felony) and the penalty of removing eligibility for parole. *Id*. at 28. There is no "real repugnance" between applying a law designed to ensure a repeat offender receives a greater sentence and a law designed to ensure that someone who commits a particularly egregious crime does not receive parole.

Second, the harmonious reading canon counsels that "statutes should be resolved in favor of each other to form one harmonious plan and give uniformity to the law." *League of Women Voters v. Renfro*, 290

So. 2d 167, 169 (Ala. 1974). Put differently, "provisions of a text should be interpreted in a way that renders them compatible, not contradictory." Jay Mitchell, *Textualism in Alabama*, 74 Ala. L. Rev. 1089, 1117 (2023). Here, only the State offers a harmonious reading of the HFOA and pharmacy statutes.

Third, and relatedly, "[e]ven if a conflict between [two] statutes exist[s], a statutory provision relating to a specific subject is understood to act as an exception to a provision relating to general subjects." *State Farm Mut. Auto. Ins. Co. v. Brown*, 894 So. 2d 643, 649-50 (Ala. 2004). Here, the general statute is the HFOA. It addresses *all* habitual offenders, which would include all the various crimes that operate as the baseline offense that trigger the HFOA, whether that baseline offense is sexual abuse of children, breaking and entering a vehicle, or pharmacy robbery. And the specific statute is the pharmacy statute because it is "restricted to a particular" "situation" and "effect," which is the crime of pharmacy robbery. Specific, Merriam-Webster's Dictionary, https://www.merriam-webster.com/dictionary/specific ("restricted to a particular individual, situation, relation, or effect"); *see also* §§ 13A-8-51, 13A-8-52. Thus, § 13A-5-9(c)(3) generally provides the trial court the

discretion to choose to enter a life sentence either with or without parole. But the pharmacy robbery statute provides that when someone is sentenced for that specific Class A felony, parole is not an option. The pharmacy statute thus "is understood to act as an exception to a provision relating to general subjects." *State Farm*, 894 So. 2d at 650.

Spencer nevertheless argues that the HFOA so conflicts with the pharmacy robbery statute that the two could not be applied in his case. Relying on the reasoning of *State v. Thomas*, 611 So. 2d 472 (Ala. Crim. App. 1992), Spencer asserts that the pharmacy robbery statute "conflicted with the terms of the HFOA." Op. Br. at 16. He argues that he should have a resentencing under the HFOA that is free of "erroneous hybrid" reasoning. *Id.* at 18-19. Then relying on *Moore v. State*, 739 So. 2d 536 (Ala. Crim. App. 1998), and *McCary v. State*, 93 So. 3d 1002, 1007 (Ala. Crim. App. 2011), Spencer contends that denying parole for "[a] sentence of a term of years is fundamentally different than a sentence of life imprisonment," because "when the maximum sentence a defendant could receive is a term of years [parole] will not have the effect of increasing that maximum sentence, as is the case when the maximum sentence a defendant could receive is life imprisonment." Op. Br. at 18.

But Spencer's textualism ad absurdum argument fails. *See Torres* 592 U.S. at 332 (Gorsuch. J., dissenting). He cannot explain why this enhancement statute should be read to open the door to more lenient sentences. And he has no answer for the various canons of construction that counsel against needlessly pitting statutes against one another when both can be given effect.

Moreover, the line *Moore* and *McCary* draw between sentences for terms of years versus life is arbitrary and underscores the problem in the reasoning of those decisions. Under *Moore*, a defendant sentenced under the HFOA to serve a term of years could still also be forced to serve "without benefit of parole" pursuant to § 15-22-27.1, *Moore v. State*, 739 So. 2d 536, 537 (Ala. Crim. App. 1998), while under *Thomas*, § 15-22-27.1's bar on parole for someone who received a life sentence was deemed incompatible with the HFOA. The court in *Moore* purported to distinguish *Thomas* because the HFOA refers to sentences for life and also sentences for life without parole. But *Moore*'s logic produces strange results. For example, if a defendant "has been previously convicted of any two felonies that are Class A," B, or C, and then commits another "Class B felony, he or she must be punished by *imprisonment for life* or for *any*

term of not more than 99 years but not less than 15 years." § 13A-5-9(b)(2) (emphasis added). That would mean that someone who commits a crime that triggers a bar on parole (like § 15-22-27.1 or the pharmacy robbery statute) could be lawfully sentenced to life or to a lengthy term that would effectively be a life sentence (like 99 years). Yet under *Moore*, a sentence of imprisonment for life would be *more* lenient than imprisonment for 99 years because the latter sentence would *not* include parole, while the former would. That is a backwards result, as the structure of the statute shows that life imprisonment is a *more* serious sentence than imprisonment for a term of years.

Moore had it half right. A statute that attaches parole ineligibility to a particular conviction "and the HFOA can be construed in such a way so that both statutes can coexist." *Moore*, 739 So. 2d at 538. And that is true whether the HFOA requires the trial court to sentence a habitual offender to life or a term of years. Spencer's contrary conclusion would read an enhancement statute to decrease penalties, and it would do so by embracing the sort of disharmonious reading of statutes that this Court has repeatedly eschewed. That approach should be rejected, and the decisions of the lower courts should be affirmed.

CONCLUSION

For all the reasons stated above, this Court should affirm the decision below.

Date: March 19, 2025

Respectfully submitted,

Steve Marshall
Attorney General

Edmund G. LaCour Jr. (ASB-9182-U81IL)
Solicitor General

George Muirhead (ASB-7345-K00L)
Assistant Solicitor General

Chris Howell (ASB-7446-S72H)
Assistant Attorney General

OFFICE OF THE ATTORNEY GENERAL
STATE OF ALABAMA
501 Washington Avenue
Post Office Box 300152
Montgomery, Alabama 36130-0152
Telephone: (334) 242-7300
Facsimile: (334) 353-8400
Edmund.LaCour@AlabamaAG.Gov
George.Muirhead@AlabamaAG.gov

Counsel for the State of Alabama

CERTIFICATE OF COMPLIANCE

I certify that this notice complies with the word limitation set forth in Ala. R. App. P. 28(j)(1). According to the word-count function of Microsoft Word, the notice contains 3,508 words. I further certify that the notice complies with the font requirements of Ala. R. App. P. 32(a)(7). The notice was prepared in the Century Schoolbook font using 14-point type. *See* Ala. R. App. P. 32(d).

s/ Edmund G. LaCour Jr.
Edmund G. LaCour Jr.
Solicitor General

CERTIFICATE OF SERVICE

I certify that on March 19, 2025, I filed the foregoing with the Clerk of the Court using the Court's electronic filing system and further served a copy upon the following parties, by email and/or placing same in the United States mail, first class, postage prepaid, addressed as follows:

Christopher S. Youngpeter
Christopher.youngpeter@oids.alabama.gov

s/ Edmund G. LaCour Jr.
Edmund G. LaCour Jr.
Solicitor General

ADDRESS OF COUNSEL:

Office of the Alabama Attorney General
501 Washington Avenue
Montgomery, Alabama 36130
Phone: (334) 242-7300
Email: Edmund.LaCour@AlabamaAG.gov